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SERVICE DATE – LATE RELEASE SEPTEMBER 2, 2014

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 290 (Sub-No. 278X)

CENTRAL OF GEORGIA RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN
MONTGOMERY COUNTY, ALA.

Decided: August 29, 2014

Central of Georgia Railroad Company (CGA), a wholly owned subsidiary of Norfolk Southern Railway Company, and CSX Transportation, Inc. (CSXT) jointly filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments and Discontinuances of Service for (1) CGA to abandon a total of 2.12 miles of CGA railroad line extending between Milepost H 411.50 and Milepost H 413.62, in the City of Montgomery, Montgomery County, Ala. (the Line); and (2) CSXT to discontinue service over approximately 0.55 miles of the Line, between Milepost H 413.07 and Milepost H 413.62. Notice of the exemption was served and published in the Federal Register on August 4, 2014. (79 Fed. Reg. 45,232). The exemptions are scheduled to become effective on September 3, 2014.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) in this proceeding on August 8, 2014. In the EA, OEA stated that CGA and CSXT consulted with the U.S. Army Corps of Engineers, Mobile District (Corps), to determine if a permit under Section 404 of the Clean Water Act is required for the proposed abandonment and discontinuance. The Corps responded that no permit by their agency is required. CGA and CSXT also consulted with the U.S. Environmental Protection Agency, Region 4 (EPA), and the Alabama Department of Environmental Management (DEM) to determine if a permit under Section 402 of the Clean Water Act is required. EPA was unable to comment and deferred to DEM. No comment was received from DEM. CGA and CSXT have indicated that measures will be implemented to prevent and/or control spills or pollutants entering surrounding waterways. In the EA, OEA recommended that a condition be imposed requiring CGA and/or CSXT to consult with DEM prior to commencing any salvage activities to confirm that the project is consistent with state and local water quality standards and that no permits under Section 402 of the Clean Water Act are required.

In the EA, OEA also stated that CGA notified the National Geodetic Survey (NGS) to determine if any geodetic survey markers may be affected by the abandonment. NGS, which maintains the National Spatial Reference System, responded with a finding that approximately three markers may be located in the proposed abandonment area. OEA recommended that a condition be imposed requiring CGA and/or CSXT to consult with NGS prior to conducting any salvage activities in order to determine if any markers may be disturbed or destroyed.

OEA issued a Final EA on August 25, 2014, noting that no comments to the EA were received by the August 22, 2014 due date and recommending that the previously recommended environmental conditions be imposed. Accordingly, the conditions recommended by OEA in the EA, and again in the Final EA, will be imposed; however, they will be imposed only on the abandoning carrier, CGA. Based on OEA's recommendation, the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

In the EA, OEA also stated that the right-of-way may be suitable for other public use following abandonment and salvage of the Line. On August 14, 2014, the City of Montgomery, Alabama (the City) filed a request for the issuance of a notice of interim trail use (NITU) to negotiate with CGA for acquisition of the Line for use as a trail under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29. Pursuant to 49 C.F.R. § 1152.29, the City submitted a statement of its willingness to assume financial responsibility for the right-of-way and acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service. By response filed on August 20, 2014, CGA has indicated its willingness to negotiate with the City for interim trail use.

Because the City's request complies with the requirements of 49 C.F.R. § 1152.29 and CGA is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement for the right-of-way during the 180-day period prescribed below. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h); Nat'l Trails Sys. Act & R.R. Rights-of-Way, EP 702 (STB served Apr. 30, 2012). If no agreement is reached within 180 days, CGA may fully abandon the Line. 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject possible future reconstruction and reactivation of the right-of-way for rail service.

The City also requested imposition of a public use condition under 49 U.S.C. § 10905 for the right-of-way. The City asks for an order allowing public use on reasonable terms and prohibiting CGA from disposing of the corridor or removing or destroying potential trail-related structures, such as bridges, trestles, culverts, and tunnels, for a 180-day period from the effective date of the abandonment and discontinuance of operating rights authorization. The City's justification for its request is that this property and its structures have considerable value for recreational trail and passenger rail purposes and that the abandonment of the Line is consistent with long-range land use plans. The City states that the 180-day period is needed to complete negotiations with CGA.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. § 10905. See Rail Abans.—Use of Rights-of-Way as Trails, 2 I.C.C. 2d 591, 609 (1986). Under § 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. 49 C.F.R. § 1152.28(a)(2). Because the City has satisfied these requirements, a 180-day public use condition will be imposed, requiring CGA to keep intact the right-of-way (including trail-related structures such as bridges, trestles, culverts, and tunnels) and to refrain from disposing of the corridor (other than tracks, ties, and signal equipment), commencing from the September 3, 2014 effective date of the exemptions.

When the need for interim trail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. While both conditions will be imposed at this time, the public use condition will expire on March 2, 2015, but the trail use negotiating period will run 180 days from the service date of this decision and notice, until March 1, 2015. If a trail use agreement is reached on a portion of the right-of-way prior to March 1, 2015, CGA must keep the remaining right-of-way intact for the remainder of the 180-day public use condition period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, CGA is not required to deal exclusively with the City, but may engage in negotiations with other interested persons.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on August 4, 2014, exempting the abandonment of the Line described above, is modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit the City to negotiate with CGA for trail use for the Line for a period of 180 days from the service date of this decision and notice, until March 1, 2015, and to permit public use negotiations as set forth below for a period of 180 days from the September 3, 2014 effective date of the exemption, until March 2, 2015. The abandonment exemption is also made subject to the conditions that CGA shall: (1) consult with DEM prior to conducting any salvage activities to confirm that the project is consistent with state and local water quality standards and that no permits under Section 402 of the Clean Water Act are required; and (2) notify NGS at least 90 days prior to beginning salvage activities that may disturb or destroy geodetic survey markers identified by NGS in order to plan for the possible relocation of the geodetic survey markers.
3. Consistent with the public use and interim trail use/rail banking conditions imposed in this decision and notice, CGA may discontinue service and salvage track and related materials. CGA shall otherwise keep intact the right-of-way, including potential trail-related structures such as bridges, trestles, culverts, and tunnels, for a period of 180 days (until March 2, 2015) to enable any state or local government agency, or other interested person, to negotiate the acquisition of the right-of-way for public use. If an interim trail use/rail banking agreement is executed before

expiration of the 180-day public use condition period, the public use condition will expire to the extent the trail use/rail banking agreement covers the same portion of the right-of-way

4. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.

5. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in ordering paragraph 4 above.

6. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h).

7. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

8. If an agreement for interim trail use/rail banking is reached by March 1, 2015, for the right-of-way, interim trail use may be implemented. If no agreement is reached, CGA may fully abandon the Line upon expiration of the public use condition imposed here.

9. This decision is effective on its service date.

By the Board, Joseph Dettmar, Acting Director, Office of Proceedings.